

protracted and expensive litigation, which is not without its weight. It was observed in the opinion delivered in April last, that the exception taken by the defendant to the jurisdiction of the court, was seriously felt, and an intimation was thrown out that if this exception had been presented at an earlier stage of the cause, and before it had, at great expense, been brought to a hearing upon the merits, it might have met with a different reception.

Now, this objection still stands, and the weight of it is still felt, and I entertain a grave doubt, whether, considering it in this light, it would be proper to recommence the litigation, and subject the parties to a further and indefinite accumulation of costs. It was one thing to say, that after a heavy expense has been incurred in preparing the cause for trial upon the merits, and when the record up to the moment of the argument disclosed no objection to the jurisdiction of the court; but, on the contrary, contained proceedings which pre-supposed an acquiescence in the jurisdiction, that an objection to the jurisdiction thus taken should not prevail, and another and a very different thing to start the parties afresh in search of new proofs and upon a new course of litigation, involving necessarily additional and heavy expense. I overruled the objection to the jurisdiction, upon the special circumstances of the case, and certainly, in part, because it seemed to me inequitable at that stage of the cause to turn the plaintiff round to his action at law, which I saw must be fruitless; but I am very far from being so clear, with reference to the power of the court to grant the relief prayed by this bill, as to feel justified in taking a step which must be productive of further expense and delay.

The rule as we have seen, is, that leave to file a bill of review may be refused, although the facts, if admitted, would change the decree, where the court, looking to all the circumstances, deems it productive of mischief to innocent parties, or for any other cause inadvisable. The doubt I entertain as to the jurisdiction of the court, does, in my opinion, render it inadvisable to put this cause in a new course of litigation, indefinite in duration and in expense, for it cannot be doubted, that